IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 27432 of 2005(N)

AGAINST THE ORDER DATED 10/08/2005 IN EP.192/2004 IN OS.398/2000 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

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1. DAMAYANTHI, W/O. KODAPPULLY PRABHAKARAN, ALAPPAD, TRICHUR.

2. JOSHI, S/O. KODAPPULLY PRABHAKARAN, ALAPPAD, TRICHUR.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SRI.SUNIL SHANKER

RESPONDENTS:

RAJAN, S/O. PADOOR AYYAPPAN, AYYANTHOLE, TRICHUR.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF OBJECTION FILED BY 1ST PETITIONER TO O.21 R 66 NOTICE

EXT.P2: COPY OF ORDER PASSED BY II ADDL.SUB COURT, TRICHUR IN EP 192/04 IN OS 398/2000

EXT.P3: COPY OF SALE PROCLAMATION

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.27432 OF 2005

Dated 15th December 2006

JUDGMENT

Petitioners are judgment debtors. Respondent is decree holder. Petitioners are challenging Ext.P2 order passed by executing court directing proclamation of sale of attached property. Contention of petitioners is that even though they have filed Ext.P1 objection, their objections were not considered by learned Sub Judge and therefore Ext.P2 order is to be quashed.

2. Learned counsel appearing for petitioners and respondent were heard.

3. Before directing sale of properties executing court is bound to consider whether sale of the entire properties is necessary to satisfy the decree or by sale of part of the property decree could be satisfied. Rule 64 of Order XXI of the Code of Civil Procedure casts an obligation and not discretion on the court. Under Ext.P2 order learned Sub Judge did not consider this question at all. So also in Ext.P1

objection, petitioners have raised a contention that the value shown by decree holder is very low and they had given a value in the objection which was not considered by the executing court. Under second proviso to Sub Rule 2 of Rule 66 of Order XXI of the Code even though court is not to determine its own value of the property, court is bound to show the value claimed by judgment debtor also in the sale proclamation. Ext.P2 order shows that learned Sub Judge has not considered this aspect. Therefore Ext.P2 order is necessarily to be quashed.

4. Learned counsel appearing for petitioners submitted that they have also claimed permission to pay the decree debt in instalments. Learned counsel appearing for respondent submitted that respondent is not interested in the property but is eager to realise the decree debt and with default clause instalment facility could be granted.

5. Ext.P2 order is quashed. Executing court is directed to grant instalment facility to petitioners to discharge the decree debt. Petitioners to pay the entire balance decree debt in ten equal monthly instalments starting from 15/1/2007. If petitioners

commit default in payment of any two consecutive instalments, executing court to pass appropriate order for sale, in the light of observations made earlier.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.